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NEW JERSEY DEPARTMENT OF  
 ENVIRONMENTAL PROTECTION; THE  
 COMMISSIONER OF THE NEW JERSEY  
 DEPARTMENT OF ENVIRONMENTAL  
 PROTECTION; and THE  
 ADMINISTRATOR OF THE NEW  
 JERSEY SPILL COMPENSATION  
 FUND,

Plaintiffs,

v.

EXXON MOBIL CORPORATION,  
 Defendant.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION - GLOUCESTER  
 COUNTY

DOCKET NO. \_\_\_\_\_

COMPLAINT AND  
 JURY TRIAL DEMAND

Plaintiffs, the New Jersey Department of Environmental Protection ("Department" or "DEP"), the Commissioner of the Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively the "Plaintiffs" or "the

State"), file this Complaint against defendant Exxon Mobil Corporation (hereinafter "ExxonMobil") and allege as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action against ExxonMobil pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"); the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20 ("WPCA"); and the common law of New Jersey for cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances or pollutants at ExxonMobil's Lail Property, as further described below. The hazardous substances and pollutants were discharged at the Lail Property, which is in Paulsboro Borough and East Greenwich Township, but the discharged substances have also migrated off the Lail Property. The total area those substances have migrated to is referred to hereinafter as the "Contaminated Site."

2. In the late 1950s, Mobil Corporation used the Lail Property for the dumping of drums containing petroleum products and other hazardous substances, thereby discharging hazardous substances and pollutants throughout the Lail Property.

3. In 1999, Mobil Corporation merged with Exxon Corporation and formed Defendant ExxonMobil, a successor corporation.

4. Over the years, unlabeled drums have been discovered on the Lail Property that contained various forms of petroleum distillates, which have caused injuries to nearby natural resources. Natural resources are damaged by, among other hazardous substances and pollutants, petroleum distillates and aluminosilicate material containing polychlorinated biphenyl ("PCB") contamination. These PCBs are toxic in the environment and have been linked to lasting adverse human health effects, including on the central nervous system and respiratory tract, blood disorders, and other serious health conditions. Remedial studies conducted at the Contaminated Site demonstrate a nexus between ExxonMobil's discharges and the contamination present.

5. New Jersey is seeking natural resource damages for the injuries to the groundwater, surface water, ecological resources, sediments, wetlands, and biota (non-human living resources) resulting from ExxonMobil's discharges of hazardous substances and pollutants.

6. The costs and damages Plaintiffs seek include the damages the State has incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Lail Property. Further, Plaintiffs seek an order compelling ExxonMobil to perform, under the Department's oversight, or to fund the Department's performance of, any

further assessment and restoration and replacement of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Lail Property, and to compensate the citizens of New Jersey for the lost use or value of any such injured natural resource.

#### THE PARTIES

7. The Department is a principal department within the Executive Branch of the State government, and under the leadership of the Commissioner, it is vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9; N.J.S.A. 58:10-23.11b; N.J.S.A. 58:10A-3.

8. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. The Department is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

9. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A.

58:10-23.11f.c and d, and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

10. Defendant ExxonMobil is a corporation organized and existing under the laws of the State of New Jersey, with its main place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298.

11. In 1999, Mobil Corporation merged with Exxon Corporation to form its successor, Defendant ExxonMobil.

#### AFFECTED NATURAL RESOURCES

12. PCB contamination has been found in the surface water, groundwater, soils, sediments, wetlands, and other ecological resources at the Contaminated Site.

#### Surface Water

13. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

14. Surface water in New Jersey is also used for other commercial and industrial purposes, such as cooling water and electrical generation, boating, fishing, and transportation of goods and services.

15. The tourism and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

16. Surface waters also provide commercial, recreational, aesthetic and ecological value, including support to aquatic communities, to the citizens of the State.

17. The Lail Property is located in a tidal area of the Delaware Estuary and is directly connected to the tidally-influenced Mantua Creek that flows into the Delaware River, two surface waters of the State. Tidal flow from the Mantua Creek enters an embayment through an approximately 100-foot-wide channel.

18. Contamination discharged at the Lail Property has migrated off the Lail Property through this tidal action as well as ground and surface water flow, causing adverse impacts to the surface water resources at the Contaminated Site.

19. PCB levels in the Delaware Estuary surface waters, for example, remain orders of magnitude above the water quality criteria.

#### Groundwater

20. Groundwater is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which contributes more than half of New Jersey's drinking water.

21. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams and

influences surface water quality, wetland ecology, and the health of the aquatic ecosystem.

22. Groundwater also provides cycling and nutrient movement, prevents saltwater intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

23. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

24. To the extent that groundwater sampling has been conducted at the Contaminated Site, results have shown PCBs at levels that exceed water quality criteria.

#### Sediments

25. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

26. Sediments are a critical example of New Jersey ecological resources.

27. Sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, including riverine coastal environments such as those present at the Contaminated Site, are a part of the State's ecosystems that provide a living substrate for submerged and emergent flora and that support

diverse invertebrate species, wading birds, and fish and shellfish populations.

28. PCB levels in sediment at the Contaminated Site remain at levels exceeding risk criteria. See Arcadis U.S., Inc., *Biological Monitoring Technical Memorandum - Year 5 and Overall Summary, Former Lail Property Gloucester County, New Jersey* (Dec. 2017) ("2017 Arcadis Report") (evidencing continued presence of PCBs at levels exceeding risk criteria in sediments).

#### Wetlands

29. Wetlands are a critical example of New Jersey's ecological resources, which include land and aquatic resources comprised of unique and complex ecosystems.

30. New Jersey has approximately 730,000 acres of freshwater wetlands and 250,000 acres of coastal wetlands.

31. Wetlands can sustain a wide diversity of plants and animals that are essential in a healthy food chain.

32. Wetlands perform many additional functions, which include the improvement of water quality, sediment trapping, groundwater recharge, shoreline protections, and protecting land from flooding and erosion.

33. Prior to discharges at the Lail Property, the tidally-impacted area at the Contaminated Site, discussed above, supported various forms of wetlands and mudflats and associated

flora and fauna. These natural resources have been and continue to be adversely affected by discharges at the Lail Property.

34. An approximately 16-acre, tidally influenced embayment and several freshwater emergent wetlands surround the immediate Lail Property boundaries.

35. Late successional forest is present at the southwest portion of the Lail Property.

36. Mantua Creek and its associated wetlands and mudflats border the embayment from north to southeast with I-295 forming the northwest border.

37. Sampling conducted after remedial measures performed by ExxonMobil confirm the continued presence of PCBs in these mudflats and wetlands at levels exceeding risk based criteria. See 2017 Arcadis Report.

#### Biota

38. New Jersey's ecosystems – forests, lakes, rivers, wetlands, agricultural lands, coastal estuaries, pinelands, and grasslands – are among the most complex and diverse in the nation.

39. New Jersey is home to more than 2,000 plant species, which include entire communities of rare flora that cannot be found anywhere else in the world. Approximately 15 percent of the native plant species in New Jersey, however, are now at risk of extinction, with a total of 331 vascular plant species listed

as endangered and an additional 32 that have already been extirpated.

40. New Jersey wildlife includes approximately 900 species, including 90 mammal species, 79 reptile and amphibian species, more than 400 fish species, and approximately 325 species of birds. Approximately 1.5 million shorebirds and as many as 80,000 raptors make migratory stopovers here each year.

41. At least 17 percent of New Jersey's native vertebrate species and 24 percent of its native invertebrate species are at risk of extinction. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulation of toxic compounds.

42. New Jersey's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the State.

43. New Jersey's ecosystems, however, are vulnerable to pollution, degradation, and destruction from the discharge of hazardous substances and pollutants. Contamination from the discharge of hazardous substances and pollutants is one of the major causes of biodiversity loss.

44. Natural resource injuries to biota in New Jersey negatively impact not only the individual species directly

involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

45. Natural vegetative communities for the area at and around the Contaminated Site include emergent wetlands, forested deciduous wetlands, moist deciduous woods, and deciduous woods.

46. Four distinct terrestrial habitats identified as previously and to some extent currently existing at the Contaminated Site include the following: a rock berm in the western embayment, which provides significant cover for small mammals; successional herbaceous habitats of the southwest embayment and southern embayment, which have varying degrees of dense herbaceous cover, standing water and inundated areas lacking cover, and limited mature forest borders as covers; and limited late successional forest with dense cover in the eastern embayment.

47. Contamination discharged at the Lail Property has caused adverse impacts to biota, such as fish and mammals described above, and PCBs remain at the Contaminated Site at levels exceeding risk criteria. See Arcadis Report (evidencing continued presence of PCBs at levels exceeding risk criteria in fish and mammals).

#### PCB CONTAMINATION

48. PCBs are man-made organic chemicals that were manufactured and widely used extensively in industrial and

commercial applications, including electrical equipment such as capacitors, transformers and switches; plasticizers in paints, plastics, and rubber products; and hydraulic fluids. PCBs may also be created as a by-product in certain manufacturing processes such as dye and pigment production.

49. The manufacture of PCBs was banned in 1979 as a result of extensive scientific evidence finding that PCBs are extremely toxic and build up in the environment, causing harmful effects to humans, animals and the environment. However, PCB use continued in existing applications.

50. PCBs have been shown to cause cancer in both humans and animals that are exposed to the chemical along with a suite of adverse health effects including compromise of the nervous, immune and reproductive systems. The U.S. Environmental Protection Agency ("EPA") has identified PCBs as a possible human carcinogen and also that PCBs have non-cancer health effects.

51. PCBs are widespread in the environment, and are persistent in soils and sediments, but are also found in the air and water. Sources and pathways of PCBs include both point sources and non-point sources, such as contaminated soils and contaminated sediment. Sources of PCBs in surface water are frequently sediments containing PCBs that were deposited decades ago yet persist due to the contaminants' properties.

52. PCBs build up in fish exposed to the contaminant.

53. PCBs that enter the food chain tend to absorb into and collect in fatty tissue of humans and take an extended amount of time before leaving the body.

54. Due to elevated concentrations of PCBs in the tissues of fish caught in the Delaware River Basin, the State of New Jersey has issued fish consumption advisories for this region.

55. In the 1990s, New Jersey listed the Delaware Estuary as "impaired" in accordance with Section 303(d) of the Federal Clean Water Act ("CWA"), because PCB contamination in fish tissue impaired the Estuary's designated use: fishable waters. In accordance with the CWA, states and the EPA shared responsibility for establishing total maximum daily loads ("TMDLs") for each pollutant contributing to impairment. A TMDL is defined as the maximum amount of a pollutant that can be assimilated by a water body without causing the applicable water quality criterion to be exceeded. TMDLs for PCBs for the Delaware Estuary – from Trenton to the mouth of the Delaware Bay – were established jointly by EPA Regions II and III on December 15, 2003. A TMDL for the Delaware Bay was established by EPA Regions II and III on December 14, 2006.

56. PCB levels in the Delaware Estuary surface waters remain orders of magnitude above the water quality criteria, and

consumption advisories in effect recommend little or no consumption of many species of Estuary fish due to PCBs.

#### GENERAL ALLEGATIONS

57. The Lail Property consists of approximately 12.46 acres of real property located at Cohawken and Berkeley Road, Paulsboro, Gloucester County. This includes 12.26 acres designated as Block 403 Lot 1.04 on the Tax Map of East Greenwich Township and 0.2 acres designated as Block 106.03 Lot 2.01 on the Tax Map of Paulsboro. The Contaminated Site includes, collectively, the Lail Property as well as a 16-acre embayment and wetland and all other areas where any hazardous substance and pollutant discharged at the Lail Property has become located, which plaintiff DEP has designated as Site Remediation Program Interest No. G000006032.

58. From 1999 through the present, ExxonMobil has owned the Lail Property. Mobil Corporation acquired the property from Thomas Lail, who owned the Property from 1979 to 1998. Prior to that, Joseph Applebaum owned the Property, beginning in 1951.

59. In the late 1950s, Mobil Corporation used the Lail Property for the dumping of drums containing petroleum products. During this time, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" at and from the Lail Property within the meaning of N.J.S.A. 58:10-23.11b.

60. Investigations began in 1982 when disposed drums were discovered on the adjacent B&B Chemicals Property. In 1986, additional drums were discovered on the Lail Property. These drums were not labeled and contained various forms of petroleum distillates.

61. Inspections reveal that an aluminosilicate material containing PCB contamination has been found in the groundwater, soils, wetlands, sediments, surface water, and other ecological resources at the Contaminated Site.

62. The aluminosilicate material was piled up to nine feet thick in some areas. Tens of thousands of cubic yards of contaminated material that had presented years of risks and damage to human health and the environment was removed from the embayment, wetlands, and adjacent uplands during the implementation of the interim remedial measure ("IRM") that is described in paragraph 68 below. Additional material contaminated with aluminosilicate remains in all of the areas despite those remedial steps.

63. Remedial studies and activities conducted at the Contaminated Site demonstrate a nexus between ExxonMobil's discharges and the contamination present.

64. Despite ExxonMobil's unique position to know the true toxic nature of the PCBs and other materials it discarded into the environment at the Lail Property, as well as increased

public awareness and understanding of the dangers associated with PCBs, ExxonMobil took no steps to remedy the conditions at the Contaminated Site until it was required to do so under DEP oversight.

65. On December 9, 1993, ExxonMobil entered into a Memorandum of Agreement ("MOA") with the State of New Jersey and Mr. Thomas Lail to remove the drums and associated contaminated soil from the Contaminated Site.

66. The drums were removed by 1995, but PCB contamination remains in the groundwater, surface water, sediments, and soil in the embayment, wetlands, and upland areas despite interim remedial measures undertaken in the late 2000s.

67. Pursuant to an Administrative Consent Order dated October 4, 2005, ExxonMobil has begun to address the contamination of PCBs at the Site, focusing on the embayment, wetlands, and upland areas. This MOA terminated in April of 2005. Extensive groundwater, soil, wetlands, surface water and sediment contamination remains.

68. An IRM was performed by ExxonMobil's environmental contractor, Arcadis U.S., Inc. ("Arcadis"), as part of site remediation measures at the Contaminated Site in 2008 and 2009 to address the primary source of the PCB-containing aluminosilicate material that had been discharged by ExxonMobil. The IRM was designed to minimize the ongoing risks posed by the

discharges of hazardous substances and pollutants at the Contaminated Site.

69. Following IRM implementation, in 2010, an environmental risk assessment ("ERA") was performed to evaluate potential additional and ongoing risks to ecological receptors based on the PCB-impacted soil and sediment remaining in place.

70. The ERA performed for ExxonMobil concluded that the IRM eliminated the primary and ongoing source of Lail Property-related PCBs (specifically the aluminosilicate material deposited in soil and sediment at the Lail Property) and that remaining PCB exposure risks to ecological receptors are below the risk-based thresholds employed by the DEP's Site Remediation Program.

71. Thereafter, the Department requested additional monitoring of aquatic and terrestrial biota to determine whether tissue concentrations in small mammals and fish are declining.

72. While the IRM and certain remedial measures limited ongoing exposure to remaining natural resources present on or near the Contaminated Site as of the time the IRM was performed in 2008 and 2009, no natural resource damage assessment or restoration measures designed to address the legacy contamination and ongoing exposure have been conducted at the Contaminated Site.

73. The extent of damages to natural resources prior to the IRM and continuing thereafter has not been evaluated and ExxonMobil has not performed any primary or compensatory restoration therefor.

74. In addition, with extremely limited exception, ExxonMobil has not characterized or evaluated the impact of PCBs and other constituents it discharged at the Lail Property, which have migrated by way of surface and groundwater influences. The impacts to Mantua Creek and the Delaware River continue given the persistence of PCBs in soils and sediments there that have migrated from the Lail Property.

75. In the 2017 Arcadis Report, *Biological Monitoring Technical Memorandum—Year 5 and Overall Summary*, submitted to the Department by ExxonMobil's environmental contractor Arcadis, Arcadis reported certain results of sampling required under the Site Remediation Program. These results demonstrated that 23 of 30 small mammal PCB sampling analyses performed detected PCBs in the tissue of those mammals collected.

76. The 2017 Arcadis Report also found that PCBs were detected in all locations where soil samples were taken. While a number of these samples reflected levels lower than those present prior to the IRM, PCB contamination remains throughout the Contaminated Site.

77. In addition, the 2017 Arcadis Report found the presence of PCBs in the fish tissue sampled. While they were in some instances at levels somewhat lower than those found prior to the IRM, they remain above risk-based levels, and no change to the fish consumption advisory related to PCBs in this area can be expected.

78. PCBs also remain in the sediments at the Contaminated Site, often reflecting only minor change from levels present prior to the IRM activities.

79. Despite the remaining contamination not addressed by the IRM and the insufficient delineation of the contamination that spread off of the Lail Property, in 2010, ExxonMobil proposed that no additional remedial measures be taken at the Contaminated Site.

#### FIRST COUNT

##### Spill Compensation and Control Act

80. Plaintiffs repeat each allegation of Paragraphs 1 through 79 above as though fully set forth in its entirety herein.

81. ExxonMobil is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

82. The Department and the Administrator have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use or value and reasonable assessment

costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Lail Property.

83. The costs and damages the Department and the Administrator have incurred, and will incur, for the Contaminated Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

84. ExxonMobil, as the discharger of hazardous substances at and from the Lail Property, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, the Department and Administrator have incurred, and will incur, to assess, mitigate, restore, and replace any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Lail Property. N.J.S.A. 58:10-23.11g.c(1).

85. ExxonMobil, as the owner of the Lail Property at the time hazardous substances were discharged there, is responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, the Department and the Administrator have incurred, and will incur, to assess, mitigate, restore, and replace any natural resource of this State that has been, or may be, injured by the

discharges of hazardous substances at the Lail Property.  
N.J.S.A. 58:10-23.11g.c(1).

86. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b(4); and for any other unreimbursed costs or damages the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b(5).

87. Pursuant to N.J.S.A. 58:10-23.11g, the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

**WHEREFORE,** the Department and the Administrator request that this Court:

- a. Order ExxonMobil to reimburse the Department and Administrator, without regard to fault, for all cleanup and removal costs and damages that the Department and Administrator have incurred, including lost use or value and reasonable assessment costs, for any natural resource of this State injured by the

discharges of hazardous substances at the Lail Property, with applicable interest;

- b. Enter declaratory judgment against ExxonMobil, without regard to fault, for all cleanup and removal costs and damages the Department and Administrator will incur, including lost use or value and reasonable assessment costs, for any natural resource of this State injured by the discharges of hazardous substances at the Lail Property;
- c. Enter declaratory judgment against ExxonMobil, without regard to fault, compelling it to perform any further remediation and restoration of the Contaminated Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- d. Enter judgment against ExxonMobil compelling it to perform, under the Department's oversight, or to fund the Department's performance of, any further remediation, restoration, and replacement of natural resources injured at of the Contaminated Site, and the assessment of any natural resource that has been or may be, injured by the discharge of hazardous substances at the Lail Property, and compelling ExxonMobil to compensate the citizens of New Jersey

for the lost use or value of any injured natural resource;

- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

#### SECOND COUNT

##### Water Pollution Control Act

88. Plaintiffs repeat each allegation of Paragraphs 1 through 87 above as though fully set forth in its entirety herein.

89. ExxonMobil is a "person" within the meaning of N.J.S.A. 58:10A-3.

90. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., which are not applicable here, it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by the Commissioner pursuant to the WPCA, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 to 1387. N.J.S.A. 58:10A-6a.

91. The unauthorized discharge of pollutants is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

92. The Department has incurred, or may incur, costs as a result of the discharge of pollutants at the Lail Property.

93. The Department has also incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Lail Property.

94. The cost and damages the Department has incurred, and will incur, for the Contaminated Site are recoverable within the meaning of N.J.S.A. 58:10A-10c(2)-(4).

95. ExxonMobil discharged pollutants at the Lail Property, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and is liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, injured, lost or destroyed as a result of the discharge of pollutants at the Lail Property. N.J.S.A. 58:10A-6af.

96. The Commissioner, pursuant to N.J.S.A 58:10A-10c., has authority to bring this action for: 1) injunctive relief; 2) the

reasonable costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including the costs of preparing and litigating the case; 3) any reasonable cost incurred by the Department, Commissioner and Administrator in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this section may be brought; 4) compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants; and 5) the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return it has or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation. N.J.S.A. 58:10A-10c(5).

PRAYER FOR RELIEF

**WHEREFORE,** the Commissioner of the Department prays that this Court:

- a. Permanently enjoin ExxonMobil, by requiring it to remove, correct, or terminate the adverse effects upon

water quality resulting from any unauthorized discharge of pollutants at the Lail Property;

- b. Enter an order assessing against ExxonMobil, without regard to fault, the reasonable costs for any investigation, inspection, or monitoring survey leading to the establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against ExxonMobil, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey leading to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter an order assessing against ExxonMobil, without regard to fault, all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Lail Property;
- e. Enter declaratory judgment against ExxonMobil, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality

resulting from any unauthorized discharge of pollutants at the Lail Property;

- f. Enter an order assessing against ExxonMobil, without regard to fault, all compensatory damages and other actual damages incurred for any natural resource of the State that has been, or may be, injured, lost, or destroyed as a result of the unauthorized discharge of pollutants at the Lail Property;
- g. Enter declaratory judgment against ExxonMobil, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that will be lost or destroyed as a result of the unauthorized discharge of pollutants at the Lail Property;
- h. Enter an order assessing against ExxonMobil, without regard to fault, the actual amount of any economic benefits it has accrued, including any savings realized from avoided capital or noncapital costs, the return it has earned of the amount of avoided costs, and benefits ExxonMobil has enjoyed as a result of a competitive market advantage, or any other benefit it has received as a result of having violated the WPCA;
- i. Enter declaratory judgment against ExxonMobil, without regard to fault, assessing the actual amount of any

economic benefits it will accrue, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, and benefits that will accrue as a result of a competitive market advantage it has enjoyed, or any other benefit that will accrue to it as a result of having violated the WPCA;

- j. Award the Commissioner her costs and fees in this action; and
- k. Award the Commissioner such other relief as the Court deems appropriate.

### THIRD COUNT

#### Public Nuisance

97. Plaintiffs repeat each allegation of Paragraphs 1 through 96 above as though fully set forth in its entirety herein.

98. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the State held in trust by the State.

99. The use, enjoyment, and existence of uncontaminated natural resources is a right common to the general public.

100. The contamination of the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site constitutes a physical invasion of the property and an

unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

101. As long as the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site remain contaminated due to the ExxonMobil's conduct, the public nuisance continues.

102. Until the groundwater, surface water, sediments, wetlands and biota are restored to their pre-discharge conditions, ExxonMobil is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to uncontaminated natural resources.

PRAYER FOR RELIEF

**WHEREFORE,** the Department and the Administrator request that this Court:

- a. Order ExxonMobil to reimburse the Department and Administrator, without regard to fault, for all cleanup and removal costs and damages, lost use or value and reasonable assessment costs that the Department and Administrator have incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property, with applicable interest;
- b. Enter declaratory judgment against ExxonMobil, for all cleanup and removal costs and damages, including lost

use or value and reasonable assessment costs, the Department and Administrator will incur for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property;

- c. Enter declaratory judgment against ExxonMobil, compelling it to perform any further remediation and restoration of the natural resources injured at the Contaminated Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- d. Enter judgment compelling ExxonMobil to perform, under the Department's oversight, or by funding the Department's performing of any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances and pollutants at the Lail Property;
- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

103. Plaintiffs repeat each allegation of Paragraphs 1 through 102 as if fully set forth in their entirety herein.

104. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the State held in trust by the State for the benefit of the public.

105. The hazardous substances and pollutants in the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site constitute a physical invasion of public property without permission or license.

106. ExxonMobil is liable for trespass, and continued trespass, because the hazardous substances and pollutants in the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site resulted from discharges of hazardous substances and pollutants at the Lail Property.

107. As long as the resources at the Contaminated Site remain contaminated due to ExxonMobil's conduct, the trespass continues.

108. Until the resources are restored to their pre-discharge quality, ExxonMobil is liable for trespass, and continued trespass, upon public property.

PRAYER FOR RELIEF

**WHEREFORE**, the Department and the Administrator request that this Court:

- a. Order ExxonMobil to reimburse the Department and Administrator, without regard to fault, for all cleanup and removal costs and damages that the Department and Administrator have incurred, including the lost use or value, and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Lail Property, with applicable interest;
- b. Enter declaratory judgment against ExxonMobil, without regard to fault, for all cleanup and removal costs and damages that the Department and Administrator will incur, including the lost use or value, and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Lail Property;
- c. Enter declaratory judgment against ExxonMobil, without regard to fault, compelling it to perform any further remediation, restoration, and replacement of natural resources injured at the Contaminated Site in conformance with the Site Remediation Reform Act,

N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;

- d. Enter judgment against ExxonMobil, without regard to fault, compelling it to perform, under the Department's oversight, or to fund the Department's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Lail Property, and compelling ExxonMobil to compensate the citizens of New Jersey for the lost use or value of any injured natural resource;
- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

#### FIFTH COUNT

##### Strict Liability

109. Plaintiffs repeat each allegation of Paragraphs 1 through 108 above as though fully set forth in its entirety herein.

110. During the period of time that ExxonMobil and its predecessors were engaged in dumping drums containing petroleum products, hazardous substances were stored at and discharged

from the Lail Property into numerous natural resources of the State, including, but not limited to surface waters, groundwater and wetlands, thereby causing damage to and destruction of natural resources.

111. By storing and discharging hazardous substances at the Lail Property and into the State's natural resources in such manner as to cause said damage and destruction, ExxonMobil engaged in an abnormally dangerous activity for which it is strictly liable.

PRAYER FOR RELIEF

**WHEREFORE**, the Department and the Administrator request that this Court:

- a. Order ExxonMobil to reimburse the Department and Administrator, without regard to fault, for all cleanup and removal costs and damages, including loss of use or value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property, with applicable interest;
- b. Enter declaratory judgment against ExxonMobil, without regard to fault, for all cleanup and removal costs and damages, including loss of use or value and reasonable assessment costs, the Department and the Administrator

will incur for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property;

- c. Enter judgment against ExxonMobil, without regard to fault, compelling it to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances and pollutants at the Lail Property, by performing under the Department's oversight, or by funding Department's performance of, any further assessment, restoration, and replacement of any natural resource injured by the discharge of hazardous substances and pollutants at the Lail Property;
- d. Award the Department and the Administrator their costs and fees in this action; and
- e. Award the Department and the Administrator such other relief as this Court deems appropriate.

#### SIXTH COUNT

##### Tortious Interference

112. Plaintiffs repeat each allegation of Paragraphs 1 through 111 above as though fully set forth in its entirety herein.

113. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the State held in trust by the State.

114. The State maintains a fiduciary duty to protect these trust resources and is vested with the authority to do so.

115. ExxonMobil has intentionally, and without justification, discharged hazardous substances and pollutants at the Lail Property.

116. ExxonMobil's discharges of contaminants at the Lail Property have caused injuries to natural resources of the State that Plaintiffs have a duty to protect.

117. The contamination of the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site constitutes a physical invasion of the public trust and thereby an unreasonable and substantial interference with the same. This invasion of the public trust is to the extent that it has caused an unreasonable and substantial interference with the State's ability to fulfill its duty as trustee to protect the natural resources of the State.

118. As long as the groundwater, surface water, sediment, wetlands, and biota at the Contaminated Site remain contaminated due to the ExxonMobil's conduct, these interferences continues.

119. Until the groundwater, surface water, sediments, wetlands and biota are restored to their pre-discharge

conditions, ExxonMobil is liable for the creation, and continued maintenance, of an interference with the public trust and an interference with the State's ability to protect trust resources in contravention of the common law.

PRAYER FOR RELIEF

**WHEREFORE,** the Department and the Administrator request that this Court:

- a. Order ExxonMobil to reimburse the Department and Administrator, without regard to fault, for all cleanup and removal costs and damages, lost use or value and reasonable assessment costs that the Department and Administrator have incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property, with applicable interest;
- b. Enter declaratory judgment against ExxonMobil, without regard to fault, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, the Department and Administrator will incur for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Lail Property;
- c. Enter declaratory judgment against ExxonMobil, without regard to fault, compelling it to perform any further

remediation, restoration, and replacement of any natural resource injured at the Contaminated Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;

- d. Enter judgment compelling ExxonMobil to perform, under the Department's oversight, or by funding the Department's performing of any further assessment, restoration, and replacement of any natural resource injured by the discharge of hazardous substances and pollutants at the Lail Property;
- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

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Special Counsel to the Attorney General

By: /s/ Allan Kanner

Allan Kanner, Esq.  
ATTORNEYS FOR PLAINTIFFS

Dated: March 7, 2019.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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ATTORNEY GENERAL OF NEW JERSEY  
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Special Counsel to the Attorney General

By: /s/ Allan Kanner  
Allan Kanner, Esq.

ATTORNEYS FOR PLAINTIFFS

Dated: March 7, 2019.

# Civil Case Information Statement

## Case Details: GLOUCESTER | Civil Part Docket# L-000297-19

**Case Caption:** ATTORNEY GENERAL VS EXXON MOBIL  
CORPORAT ION

**Case Initiation Date:** 03/07/2019

**Attorney Name:** ALLAN KANNER

**Firm Name:** KANNER & WHITELEY, LLC

**Address:** 701 CAMP ST

NEW ORLEANS LA 70130

**Phone:**

**Name of Party:** PLAINTIFF : Attorney General

**Name of Defendant's Primary Insurance Company**

(if known): Unknown

**Case Type:** ENVIRONMENTAL/ENVIRONMENTAL COVERAGE  
LITIGATION

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Hurricane Sandy related?** NO

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Other(explain) Regulatory Agency

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

03/07/2019

Dated

/s/ ALLAN KANNER

Signed